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REPORT
No. 97-484

CENTRAL INTELLIGENCE AGENCY SPOUSES' RETIREMENT EQUITY ACT OF 1982

JUNE 30 (legislative day, JUNE 8), 1982.—Ordered to be printed

Mr. INOUYE (for Mr. GOLDWATER) from the Select Committee on Intelligence submitted the following

REPORT

[To accompany S. 2422]

The Select Committee on Intelligence, having considered an original bill (S. 2422) to provide for equitable sharing by the spouses of qualified Central Intelligence Agency officers in retirement benefits earned as a result of service with the Agency, reports favorably thereon with amendment and recommends that the bill do pass.

PURPOSE

The purpose of this bill is to secure an equitable share of retirement benefits for qualified spouses of Central Intelligence Agency (CIA) employees who have served a substantial period overseas. These benefits include retirement annuities, survivor payments, and lump-sum disbursements from the retirement fund. This bill would help assure that the spouses of CIA officers, many of whom have made deep personal and professional sacrifices by following their intelligence officer-partners abroad in difficult service, will not be left without means of support in their retirement if their marriages were later to end in divorce.

Under the bill, an individual who has been married for more than ten years to a CIA officer would presumptively be entitled to a pro rata share of the officer's retirement benefits, up to fifty percent, based on the length of the marriage during the period of Agency service prior to divorce. The spouse would also be entitled to a similar share of the officer's survivorship benefits. These provisions are substantially equivalent to those the Congress adopted for Foreign Service spouses under Section 814 and related provisions of the Foreign Service Act of 1980, Public Law No. 96-465. Only employees and spouses who have served

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for more than five years abroad together during the marriage would be covered by these amendments.

This bill will not only go a long way toward financially protecting CIA spouses who have followed their husbands or wives abroad, but will also help the Agency attract the best possible calibre of employee, such as those who otherwise would have two-career marriages. It will also help to highlight publicly the difficult personal and professional situation of our intelligence officers and their families who serve the Nation abroad.

While providing these assurances, the bill would not necessarily substantively alter the outcome of divorces involving CIA officers. The entitlement of the former spouse to a share of retirement or survivorship payments would be fully reviewable by courts in the context of dividing marital assets at the time of divorce. Today, retirement benefits of CIA officers are already includable in marital assets subject to apportionment by state divorce courts. The fact that the payments to former spouses would be made automatically from the retirement system, unless the divorce court orders otherwise, however, would make these benefits more dependable, particularly during the time before final judicial determination of the terms of the property division.

COMMITTEE ACTION

During the winter of 1981–82, a number of CIA spouses and former spouses and other individuals associated with the Agency, including Mr. William Colby, former Director of Central Intelligence, approached Senator Goldwater, Chairman of the Select Committee on Intelligence, and Senator Inouye, former chairman of the Committee, to request the legislation be enacted to make CIA retirement benefits, which are currently paid exclusively to the employee except when specified otherwise by court divorce order, automatically available in part to former spouses of these employees. Similar legislation had been enacted in 1980 for spouses of Foreign Service officers, who also serve for significant periods overseas, under Section 814 and related provisions of the Foreign Service Act of 1980, Public Law No. 96–465. In response to these contacts, Committee staff met with several of these individuals and also with CIA officials, notably Mr. Stanley Sporkin, Agency General Counsel, to discuss the concerns of CIA spouses and former spouses, especially in connection with divorce. As a result of this meeting and other actions, the CIA established a task force on spousal concerns, and this task force subsequently prepared a report on divorce-related problems and other issues.

Difficulties appear to be present in the equitable distribution of retirement benefits to former spouses and the handling of divorce-related requests by spouses or former spouses for Agency assistance in securing through judicial action a share of the retirement benefits of Agency employees. These difficulties were not completely resolved by Executive Order No. 12197 in 1980, which inter alia provided that retirement benefits under the CIA Retirement and Disability System (CIARDS), like Civil Service retirement benefits, would be subject to judicial apportionment in the context of the division of marital assets at the time of divorce. Specific problems in administering the

Executive Order and equivalent Civil Service provisions made it difficult for former spouses of CIA employees to obtain relief both during and after divorce proceedings. These difficulties were compounded by the overseas location of these spouses during much of their potential professional life, and also by the need of the Agency to retain secrecy concerning the details of the identities and assignments of its personnel who have operated in a clandestine capacity.

In response to these concerns, Committee staff drafted S. 2422, which was introduced by Senator Inouye on April 22, 1982, on behalf of himself, Chairman Goldwater, Senator Moynihan, Vice Chairman of the Select Committee, Senator Durenberger, and Senator Huddleston. S. 2422 as introduced would have adapted the provisions of the Foreign Service Act of 1980 relvant to retirement benefits for former spouses for insertion in the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note). As such, it would have been applicable only to employees participating in the CIARDS retirement system; it would have covered all such employees, regardless of their actual service abroad. (Nearly all CIA employees with significant overseas service participate in CIARDS and not the Civil Service Retirement and Disability System (CSRDS), and virtually all CIARDS participants have served a substantial period abroad.)

The Committee hearing on S. 2422, held on May 5, 1982, was closed due to the sensitive nature of some of the personal identities and case histories discussed. The testimony of several CIA spouses and former spouses was heard, as well as the testimony of high-ranking ex-officials of the CIA including Mr. Colby. The Agency was represented by General Counsel Sporkin as well as supporting staff from the Agency's personnel division. Testimony of several former CIA intelligence officers was also heard.

Out of concern that the views of current intelligence officers be heard despite the problems in reaching them and eliciting their testimony, and in order to obtain a clearer and more detailed statement of the Agency's position on the bill, Senator Inouye, who chaired the May 5 hearing, instructed that the record be left open for ten additional days to receive written comments. All comments so received have been considered by the Committee's staff and included in the record regardless of when they were received. Scores of comments were received from CIA employees, both in the United States and abroad, in response to the Agency's solicitation of comments in an Employee Bulletin. The Agency itself also provided detailed written comments on the bill during the response period.

The Committee wishes to record that approximately seventy-five Agency employees as well as current and former spouses of Agency employees commented on the bill. A majority of wives and former spouses supported S. 2422, as did some Agency officers who would be affected by the legislation. A substantial majority of employees, however, opposed the measure. The Committee wishes to record these views, but feels that S. 2422 properly addresses a situation in need of legislative attention. The Committee also recognizes, furthermore, that many of the critical comments it received concerned the difficulties in communication of the terms of the bill to Agency employees.

In response to the comments received, and also in light of the passage of similar provisions by the House of Representatives in Title VI of H.R. 6068, Committee staff developed several amendments to S. 2422 as introduced. These amendments are considered in a separate section below. On June 17, 1982, the full Committee met under the chairmanship of Senator Inouye to mark-up S. 2422. Senator Bentsen asked to have his name added as a cosponsor of the bill. The technical amendments to the bill were adopted by the Committee in the mark-up and the Chairman, without objection, instructed Senator Inouye to submit the measure and this report to the floor, subject to perfecting amendments by staff.

BASIC PROVISIONS

S. 2422 would essentially create an interest by spouses of CIA employees who have served five years abroad in the retirement benefits of the employees.

Under the bill:

(1) A former spouse of a current or former CIA employee would be entitled to a share of the employee's partner's retirement benefits in proportion to the length of the marriage during the participant's period of creditable service, up to one-half of such benefits, provided both marriage partners sent five years abroad and the marriage was for a minimum of ten years during creditable government service.

(2) Qualified former spouses would also be eligible for prorated survivorship payments from the retirement fund, and the annuity of the participant would be automatically reduced in order to provide such payments (in accordance with the current formula), subject to an election otherwise by written consent of current marital partners or modification of such entitlements for former spouses through spousal agreements or divorce proceedings.

(3) Qualified former spouses would be provided a pro rata share of lump-sum retirement payments to CIA employees or former employees. Withdrawals of lump-sum amounts from the retirement fund by a participant would be subject to the express written consent of a current spouse or qualified former spouse with whom the participant is not a party to a final spousal agreement or judicial order concerning the division of marital assets.

(4) The provision of Executive Order No. 12197 (1980), in section 1–101(e), that payments from CIARDS are subject to divorce-related legal decrees, would be incorporated into statute and expanded to include spousal agreements as well. This would enable current marital partners to adjust the equities of their individual situation voluntarily through agreement as well as allow the court to adjust them in the context of legal proceedings surrounding divorce or separation. This provision would provide an "escape hatch" in those cases in which the distribution of benefits between the parties under the new provisions did not adequately reflect the true situation of the marriage.

(5) The Act would become effective ninety days after enactment. The change in the disposition or retirement annuities de-

scribed in paragraph (1) above would be applicable to spouses who are divorced after enactment and whose partners retire after enactment. The provision of survivorship benefits described in paragraph (2) above would apply to spouses who are divorced after enactment. Phasing in the new distribution of benefits in this way ensures that no current financial situations are substantially affected and that the preconditions of existing divorce decrees are not materially changed.

RATIONALE OF THE BILL

The basic rationale of S. 2422 is to recognize the personal and professional sacrifices made by the spouses of CIA officers engaged in overseas service, especially in a clandestine capacity. The combination of overseas assignment and the clandestine nature of the work of the officer place special demands on the CIA spouse. In many ways, these demands and sacrifices are similar to these of Foreign Service spouses; but in some ways, they are even more severe. The CIA spouse may be subjected to greater psychological and social pressure as a result of the clandestine nature of certain activities. The following excerpt from the Foreign Relations Committee Report on the Foreign Service Act of 1980 highlights the need for this legislation:

> The nature of a Foreign Service career makes it particularly difficult for spouses of members of the Foreign Service to attain any independent economic security. Not only do the frequent transfers among Foreign Service posts around the world militate against the establishment of an independent career for a spouse, but the opportunity for paid employment of any kind in most foreign countries for a spouse is minimal due to legal, language, and cultural barriers. Foreign Service spouses, therefore, have little opportunity either to establish pensions in their own right or to develop marketable skills which can be put to use when the need arises. At the same time, they often contribute countless unpaid hours to the Service. Under current law, in the event of divorce, a formed spouse of a Foreign Service member is denied retirement or survivorship rights under the Foreign Service Retirement System. In contrast, under social security today, a nonworking spouse can acquire a pension based on the work of his or her spouse.
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> Equally unsatisfactory is the decision [which is the case today for CIA spouses] to leave this problem to a solution by court order. Access to the courts is expensive, particularly for individuals such as Foreign Service spouses who typically have no jobs, no insurance, and no other income to speak of. There is no real precedent for awarding to former spouses a percentage of pensions or survivor annuities. In addition, widely varying divorce laws from state to state would result in different awards of a Federal benefit for the same deprivations. Furthermore, there is little or no awareness among the legal community of the special problems faced by Foreign

> Service spouses. Finally, overseas service frequently results in cutting off these individuals from their community roots, thereby exacerbating the problems normally faced by women seeking divorce. In particular, this results in reliance on a husband's lawyer or on his recommendation. [This] section [,] . . . therefore, seeks to provide some protection for these individuals through the mechanism of the retirement system.

The Spouses' Contribution

Even more than in the ordinary case, however, the spouse of a CIA officer serving in a clandestine capacity may provide valuable support to his or her partner's professional service as well as make great personal sacrifices. Several factors illustrate this situation:

Spouses of CIA officers in clandestine service are routinely located abroad for long periods of time and are subject to continual transfers. They are required to live without the personal and social support groups that would often be available within the United States. Because of the nature of their service, some such spouses may not even be able to avail themselves of the social connections provided by American consular and diplomatic staff.

As a result of their foreign location and frequent transfers, such spouses often forgo the opportunities for personal and professional development that are available to others. Living in foreign countries and moving from place to place make finding a job difficult. Employment abroad for such spouses may be legally barred or unavailable. Even when employment is obtained, its short-term nature may make normal career advancement, as well as participation in retirement plans, impossible. Employment of a spouse in connection with activities at a CIA station abroad may be subject to nondisclosure agreements that prevent it from being included in personal resumes and similar forms of professional documentation. Also, certain occupations—such as writing—may be effectively foreclosed because they would tend to endanger the clandestine nature of the CIA officer's activities by increasing the visibility of the couple or even compromising certain information about the CIA officer's activities.

The spouse of a CIA officer in clandestine service also may provide more support to the officer, the family, and the country than do other spouses in similar situations. It has been estimated by the Association of American Foreign Service Women that the total hours spent by Foreign Service spouses in service-related activities amount to fully 127 hours or more. The spouse of a CIA officer may provide similar or even more substantial services.

A CIA spouse may have special social and personal obligations resulting from CIA activities under cover. Such activities may place special personal demands on the spouse. The occurrence of clandestine activities may cause the spouse special problems in the management of the household.

While spouses may not become directly involved in clandestine activities, situations may arise when the nature of the activities undertaken inevitably affects the officer's spouse and family. Spouses and sometimes entire families are subject to social pressures resulting from

the secrecy that the officer's work entails. There is also the inevitable fear by the spouses for the physical safety of their partners.

Occasionally officers in clandestine service become exposed, with unavoidable effects on the entire family. Some exposures have occurred in recent years due to the "naming of names' of purported intelligence officers by persons deliberately involved in compromising U.S. intelligence activities abroad; the Congress has recently moved to protect intelligence officers from exposure in this fashion through passage of the Intelligence Identities Protection Act of 1982.

The Committee cannot reveal in the present Report all details of individual case histories that have come before it during consideration of S. 2422, in the closed hearing and the classified record. Therefore, the Committee cannot communicate publicly the full dimensions of the difficulties faced by CIA officers and their spouses in clandestine service abroad. To facilitate greater understanding of these matters, and the motivation of the present bill, however, the Committee intends to release as much of this material as possible in a forthcoming public hearing record, after consultation with the CIA concerning appropriate classification.

Procedural Difficulties During Divorce

Secrecy concerns also interfere with the attempts of CIA spouses to claim equitable benefits from the Agency's retirement system. Former spouses of CIA officers who have been in clandestine service are specially disadvantaged in attempting to obtain an interest in their partner's retirement benefits. Like the spouses of Foreign Service officers, they have in many cases provided substantial support to the professional career of their partner. They have often relocated into circumstances in which their personal career development has been impeded. It would be difficult for them, like former Foreign Service spouses, to obtain full recognition of their contribution to the marital unit in judicial divorce proceedings. For them, as for other classes of Federal employees, court decrees requiring alimony payments by their former partners as part of an overall divorce decree may be defeated through procedural devices and jurisdictional means. For example, former partners may avoid making court-directed alimony payments by leaving the jurisdiction in which their former spouses are located, making collection time-consuming and difficult. Such a situation can be especially harsh for former spouses who have voluntarily neglected their own professional development and employment career to provide essential personal support for their partners.

In addition to these ordinary obstacles, former spouses of CIA officers in clandestine service may be prevented from revealing in open court the details of their personal circumstances during certain periods of the marriage. While special procedures—such as the use of cleared attorneys and in camera judicial proceedings—may be available to surmount such difficulties, these additional complications may make enforcing their rights in court difficult. Even though the CIA is willing in principle to provide essential security services in connection with such proceedings, such as clearing attorneys and providing sanitized employment records when necessary, the Agency could be overwhelmed

if the volume of such requests were large. And for some former spouses any delay in legal proceedings may cause extreme difficult.

COST OF THIS LEGISLATION

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that there will be little or no cost as a result of the passage of this bill.

EVALUATION OF REGULATORY IMPACT

In accordance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will be incurred in implementing the provisions of this legislation.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 29, 1982.

Hon. BARRY M. GOLDWATER,
Chairman, Select Committee on Intelligence,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2422, the Central Intelligence Agency Spouse's Retirement Equity Act of 1982, as ordered reported by the Senate Select Committee on Intelligence on June 17, 1982.

This bill would permit former spouses of Central Intelligence Agency retirees to receive a share of retiree annuity and survivor benefits. Since the bill would redistribute but not increase retiree benefits, it is expected that no significant cost to the government will be incurred as a result of enactment of this legislation.

Sincerely,

RAYMOND C. SCHEPPACH
Alice M. Rivlin (For Director).

SECTION-BY-SECTION ANALYSIS

Section 1—Short Title

This Act may be cited as the "Central Intelligence Agency Spouses' Retirement Equity Act of 1982."

Section 2—Qualified Former Spouses

Sec. 2 amends section 204 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) ("CIARDS Act"), (1) to include certain former spouses as persons eligible to receive annuity payments; and (2) to provide that, in order to qualify for benefits under the provisions of this Act, a former

spouse must be married to a participant for at least ten years during the period of creditable service by the participant, as defined in the relevant sections of the CIARDS Act, and that at least five of these years must have been spent in service outside the United States.

Section 3—Computation of Annuities for Other than Former Spouses

Sec. 3 amends the CIARDS Act to (1) insert a new heading prior to section 221; and (2) replace section 221(b) with corresponding provisions from the Foreign Service Act of 1980, Public Law 96–465, which conform with the effective provision of retirement benefits to former spouses under subsequent sections of this bill. The detailed amendments contained in this section correspond in purpose with those adopted in section 806(b) of the Foreign Service Act, and have been analyzed in a detailed manner in the report of the Foreign Relations Committee on that Act. Sen. Rept. No. 96–913, at page 62. The amendments to subsections 221(b)(1)(B)–(C) of the CIARDS Act have been changed in a minor respect, to delete the time limits contained in the Foreign Service Act for the election of the participant and his current or former spouse to waive survivor payments. This is in response to the experience of the State Department under the Foreign Service Act, as transmitted to the Committee by the CIA, which has revealed that such time limitations are unneecssary to effective administration of these two subsections.

Section 4—Former Spouse's Right of Election of Survivorship Benefits

This section provides that a former spouse eligible to receive a survivor annuity from the CIARDS fund shall only receive it if the former spouse elects to receive it instead of any other survivor annuity to which he or she may be entitled under CIARDS or another federal retirement system on the basis of a marriage to someone other than the participant whose survivorship rights are being claimed.

Section 5—Supplemental Annuities; Recomputation of Annuities

The new subsection (m) to section 221 of the CIARDS Act adopted in this section corresponds to section 806(i) of the Foreign Service Act of 1980. It is intended to provide a survivorship annuity for the spouses of CIARDS participants who return to active service with the Agency under section 271 of the CIARDS Act. In such cases, the supplemental retirement annuity of the participant based upon his additional service would automatically generate a supplemental survivorship payment in favor of the last surviving spouse, to whom the participant was married at or after the time of reversion to retired status. Contributions for, and eligibility for, this supplemental benefit could be waived by a joint written election otherwise by the participant and the current spouse during the time of the participant's return to service with the Agency. A detailed explanation of this subsection is given in the report of the Foreign Relations Committee on the corresponding subsection of the Foreign Service Act of 1980, in Sen. Rept. No. 96–913 at page 63.

New subsection (n) to section 221 of the CIARDS Act is equivalent to section 806(j) of the Foreign Service Act of 1980, and is discussed

in Sen. Rept. No. 96–913 at page 63. It provides for recomputation upwards of the basic annuity of an annuitant who is married upon retirement or thereafter, and who has chosen to provide a survivorship to his current spouse, if the annuitant subsequently becomes single through death or divorce. The subsection also allows an annuitant receiving his full share of annuity payments to elect to provide a survivor benefit in the case of remarriage.

Section 6—Computation of Annuities for Former Spouses

Section 6 adds a new section, section 222 to the CIARDS Act, entitled "Computation of Annuities for Former Spouses". This section establishes the right of qualified former spouses to a pro rata share of retirement and survivor payments under the Act (subsections (a)–(b)) and for the obtaining by the participant of additional survivorships (subsection (c)). Subsection (d) specifies that payments under the preceding subsections in favor of current or former spouses would not be subject to the provision of section 221(l) of the CIARDS Act that monthly payments from the CIARDS fund must be greater than the smallest monthly primary insurance payment under Social Security.

Section 6 is completely derived from section 814 of the Foreign Service Act of 1980, Public Law No. 96–465. The specific provisions of this section are given a detailed analysis in the report of the Foreign Relations Committee on that Act in Sen. Rept. No. 96–913, at pages 66–70. Subsection (a)(4) has, however, been deleted; this is upon the suggestion of the CIA which transmitted comments by the State Department to the Select Committee, to the effect that the time limit contained in this subsection on the effectiveness of spousal agreements and court orders was unnecessary. The succeeding paragraphs of subsection (a) (5), (6), and (7), have accordingly been renumbered (4), (5), and (6), respectively.

Section 7—Election of Survivor Benefits for Certain Former Spouses

Section 7 adds a new section to the CIARDS Act, section 223. Subsecton (a) of the new section provides that any current or former participant in CIARDS may elect to receive a reduced annuity in order to provide a survivor annuity to a former spouse not otherwise eligible for survivorship benefits under section 222(b), the new former spouse amendment relating to such benefits. Subsection (b) gives the procedural conditions for this election: Paragraph (1) provides that participants or former participants who have not yet retired under CIARDS may so elect any time before their retirement; paragraph (2) provides that the Director may prescribe a period for such election by retired participants and former participants.

The amendments contained in section 7 derive from section 2109 of the Foreign Service Act of 1980. They were adopted by the House and Senate conferees on that Act and are discussed on page 116 of the Conference Committee Report, H.R. Rept. No. 96–1432. The intent of this provision is to provide a vehicle by which participants in CIARDS may provide a survivorship from the System in favor of their former spouses who are not covered by the amendments due to the non-retroactive effect of these amendments.

Section 8—Lump-Sum Payments; Rights of Current and Former Spouses

Section 8 inter alia amends section 234 of the CIARDS Act, on lump-sum payments from the CIARDS fund, by bringing it into conformity with section 815(i) of the Foreign Service Act of 1980, Public Law 96–465, concerning the right of former spouses to a pro rata share in lump-sum payments from the fund. Subsection (1) amends subsection 234(a) of the CIARDS Act by adding a phrase at the beginning of that subsection to the effect that payments under section 234 are subject to the limitations contained in the new subsection (c) and (d) added by this section concerning the rights of former and current spouses.

Subsection (2) adds a new subsection to section 234 of the CIARDS Act, subsection 234(c), which provides that a qualified former spouse is entitled to a pro rata share in lump-sum disbursements from the CIARDS fund in the same proportion as for retirement annuities and survivor payments under section 222(a)–(b). New subsection 234(c) is drawn directly from subsection 815(i) of the Foreign Service Act; a discussion of its effect is given on page 70 of the report of the Foreign Relations Committee on that Act, Sen. Rept. No. 96–913.

Subsection (3) adds a new subsection (d) to section 234 of the CIARDS Act, to the effect that the Director may make lump-sum disbursements to CIARDS participants or former participants only upon notification of any current spouse or former spouse with whom the participant or former participant has not concluded a final, legally recognizable and enforceable property settlement or judgment incident to divorce proceedings, and that the express written waiver of such spouse or former spouse be obtained before any lump-sum payment is made from the fund.

New subsection 234(d) is original and is intended to ensure that the rights of qualified former spouses to a share of retirement benefits from the fund are not defeated through lump-sum withdrawals by CIARDS participants or former participants. Such withdrawals could occur either before or at the time of retirement and could be made with the knowledge that divorce is impending. In requiring express written waiver of both spouses for lump-sum withdrawals from the CIARDS fund, the new provision is similar to the express written waiver of both spouses required for waiver of survivorship rights, contained in new section 221(b)(1)(B)–(C) of the CIARDS act, which is adopted in section 3 of the present bill.

Section 9—Spousal Agreements; Court Decrees

Section 9 amends section 263 of the CIARDS Act, (1) by providing that the prohibition on attachment, garnishment and other forms of legal process of benefits from the CIARDS fund is subject to the new subsection, (b), added to section 263, and (2) by adopting the new subsection. Subsection 263(b) provides that payments under the CIARDS Act which would be made under any other section of the Act shall be made to a participant or the child, survivor, or former spouse of the participant based on the service of the participant as specified in any legally enforceable spousal agreement or recognized court decree of divorce, annulment, or legal separation between the

participant and that former spouse or the terms of any recognized court order or court-approved property settlement agreement incident to any such spousal agreement or court decree of divorce, annulment, or legal separation. It provides further that any such payment shall bar its legal recovery by any other person.

The amendments to section 263 of the CIARDS Act adopted in this section serve the same purpose as section 820(b) of the Foreign Service Act of 1980, with respect to modification by the participant and a current or former spouse through spousal agreement or judicial order incident to divorce or similar proceedings of a former spouse's share of CIARDS benefits. This section makes clear that the qualified former spouse's share of retirement annuities, survivor payments, or lump-sum disbursements from the CIARDS fund established under other sections of this bill are fully subject to the action of the participant and current spouse through spousal agreement, or the court in divorce or similar proceedings involving a current or former CIARDS participant as one of the parties. This provision as adopted was drawn from the existing provision of law allowing the payment of CIARDS benefits to be affected by divorce, annulment, or legal separation-related judicial decrees, orders, or approved settlements—section 1–101(e) of Executive Order No. 12197.

The Committee intends that this provision shall preserve the right of the state divorce courts thoroughly to review the relative positions of the parties at the time of divorce, annulment, or legal separation, and to make a determination of the distribution of marital assets de novo, without any binding substantive presumption concerning the proper shares of the parties thereto in benefits to be paid from the System. Thus the apportionment of CIARDS benefits specified in other sections of these amendments is not conclusive, but serves primarily as a procedural device to ensure that former spouses of participants or former participants do not experience undue difficulties in receiving their equitable share in marital assets either during the time prior to a final, judicially approved property settlement or thereafter. Of course, the former spouse would be entitled to receive the prescribed share unless the divorce court finds that this division would be inappropriate, in accordance with the court's authority under applicable state law governing property division in connection with divorce to make a determination based on the circumstances of the marriage.

Operation of the provisions of this bill can also assist the Agency in its administration of such domestic matters. The bill provides for automatic payments that need not be challenged by the parties—which may create security problems for the Agency because of the potential need to divulge and discuss the conditions of Agency service in court and to draft a property order including the Agency-related retirement benefits—if it provides an accurate reflection of the circumstances of the parties to the divorcee or if other marital assets could conveniently be divided so as to render the statutory division of retirement benefits fully equitable.

The Committee wishes to emphasize that the operation of these amendments is not intended to create a "federal law of divorce" through a substantive specification of the presumptive shares of

husband and wife in retirement benefits earned through the service of one of the marital partners. The state divorce courts remain completely free under this section to reexamine the distribution of benefits established in the other sections and to divide them on equitable grounds, under applicable state law. These benefits have already been made a marital asset subject to determination by the state courts in the context of divorce, annulment, or legal separation through the operation of section 1–101(e) of Executive Order No. 12197, which was adopted to bring CIARDS into conformity with similar provisions applicable to the Civil Service System under a 1978 amendment to the System contained in Public Law 95–366 and codified as 5 U.S.C. 8345(j).

Section 10—Technical Amendments

This section makes two minor technical amendments, to conform other provisions of the CIARDS Act to the changes made in this bill. Subsection (1) adds a new phrase to subsection 221(f) of the CIARDS Act to make it clear that the election of a participant under subsection (f)(1) to receive a reduced annuity in order to create a survivorship is subject to the rights of former spouses under new sections 221(b) and 222. Subsection (2) repeats the provisions of subsection 222(d) that the restrictions on minimum payments from the fund contained in subsection 221(l) do not apply to the extent provided in section 222(d), which lifts these restrictions for former spouses, and in the case of additional survivor annuities elected under section 222(c).

Section 11—Excess Contributions to CIARDS

Currently under CIARDS an employee must continue to make the mandatory retirement contribution from his salary even after he has reached the maximum obtainable benefit level. This is not the case with the Civil Service Retirement and Disability System or with the Foreign Service Retirement and Disability System, both of which permit the withdrawal of excess mandatory retirement deductions. The amendment in this section would add a new subsection 211(c) to the CIARDS Act to give CIARDS participants in this situation the option of purchasing additional annuities or applying for a refund of excess contributions. Before either option could be exercised, however, the excess contributions would first be applied toward uncovered service.

The Committee has been requested by the CIA to make this amendment to CIARDS in the context of the Committee's reexamination of the provisions of CIARDS in connection with the problem of providing benefits for former spouses. The Committee believes that this proposal is sound and fair and would bring the principles of the CIARDS system into line with the other federal retirement systems in this regard. Additional clauses have been added to the original CIA proposal to specify that refunds of lump sums would be subject to the express written waiver of a current or certain former spouses under section 234 and that excess contributions could be applied to purchase additional retirement or survivorship benefits for a current or former spouse or spouses as well as any other additional annuities in accordance with section 281.

Section 12—Civil Service Employees of the Agency

Section 12 was not present in S. 2422 as introduced April 22, 1982. As introduced the bill would have made detailed statutory amendments to the CIARDS Act to bring this System into conformity with the Foreign Service Retirement and Disability System with regard to the rights of former spouses to payments from the System. During the Committee's consideration of S. 2422 during its closed hearing on May 5, 1982, and in subsequent unclassified written comments, the CIA strenuously urged the Committee to include its Civil Service employees as well as its CIARDS participants if former spouse provisions were to be added to the latter retirement scheme. The Agency argued that if CIARDS were amended to incorporate these provisions, and not the Civil Service Retirement and Disability System, the retirement options available to Agency employees could be distorted. CIARDS was established as a preferential retirement system for Agency personnel in certain categories of employment, usually involving difficult overseas service, with improved retirement benefits and an earlier mandatory retirement age.

Section 12 was added to the bill by the Committee in response to these and other concerns. This section is modelled after similar provisions adopted by the House of Representatives as Title VI of its Intelligence Authorization Bill for Fiscal 1983, H.R. 6068. The House bill would establish the right of qualified former spouses to share in retirement and survivor payments from both CIARDS and the Civil Service System, for CIA employees who retire from the Agency. The House bill would instruct the Director of the Office of Personnel Management, in consultation with the Director of Central Intelligence, to issue regulations implementing these entitlements and bringing the administration of retirement systems for eligible CIA employees into conformity with the Foreign Service Retirement and Disability System in this regard.

In addition to its request that its Civil Service participants be included in the amendments contained in this bill, the CIA has also requested that it be given considerable regulatory flexibility in designing provisions for former spouses. The Select Committee believes that the detailed provisions of S. 2422 concerning CIARDS are well-known in the context of the passage of the similar provisions of the Foreign Service Act in 1980 and in view of the one year experience of the Department of State in administering these provisions. The Committee is unwilling, however, to draft similarly detailed statutory provisions for CIA employees who participate in the Civil Service Retirement and Disability System. Therefore, the Committee has decided to retain the detailed statutory amendments contained in S. 2422 as introduced with respect to CIARDS, with several amendments described hereinbefore, and to incorporate the present section to cover Civil Service participants, in accordance with the request of the Agency and the recent action of the House of Representatives.

Section 13—Effective Date

The amendments to CIARDS would take effect ninety days after the enactment of this bill. (For the similar effective date provisions for the amendments applicable to qualifying CIA employees who participate

in the Civil Service System, see the new section 14(e) of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403 a–m, adopted in section 14 of the present bill.) The automatic retirement benefits for qualified former spouses established in these amendments would become available to spouses who become divorced after the effective date, providing their partner separates from service with the CIA after this date. Thus the amendments to the retirement annuity provisions would not affect retirement benefits already being paid to retired CIARDS participants. The survivorship benefits would apply only to spouses who are divorced after the effective date.

Establishing the effective date in this way leaves certain former spouses, who are divorced before enactment of the amendments, without additional protection. While the Committee realizes that this group has certainly made an important contribution as a result of their marriages, it has decided not to pursue a statutory remedy in their favor at this time. This is because to do so would be retroactively to change the amount of payments already being received under CIARDS and possibly even to affect the validity of existing divorce decrees. The Committee feels, nevertheless, that at some future date the Congress may wish to consider providing additional benefits to this group in recognition of their important service.

Survivorship benefits could, however, be secured for certain ineligible former spouses through a voluntary election by their former partners who are participants in CIARDS, through an election under section 7 of the present bill. CIARDS participants so electing could choose to receive a reduced annuity in order to provide survivor benefits for their ineligible former spouses.

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